

Exchange market, and the markets that are maintained in the issuers' stocks. Specialists also would be required to contact (quarterly) off the Floor or, if on the Trading Floor, outside of the Exchange's regular auction market business hours, major order flow providers to maintain open communications with these important customers of the Exchange. The purpose of these contacts with order flow providers is to discuss the service, operational and competitive requirements of the member firms. In addition, specialists would be required to maintain records of these contacts, which would be reviewed by Amex staff.

The Exchange notes that the purpose of requiring contacts to be made by specialists off the Floor or, if on the Floor, outside of regular auction market business hours, is to ensure that the contacts can occur without the distractions of a normal business day. The Performance Committee would be responsible for taking appropriate remedial action in the event that a specialist fails to meet the objective marketing standards.

A review by the Performance Committee can result in a variety of possible actions, ranging from recommendations for performance improvement, a determination not to permit a firm to seek new allocations, to a reallocation of one or more securities from a specialist. The Performance Committee is not precluded from reallocating securities based on a single quarter of deficient performance. Conversely, the Performance Committee is not required to take such actions. Rather, the Exchange believes that the purpose of these standards is to identify circumstances that warrant review by the Performance Committee. The nature of the appropriate remedial action is necessarily an issue that involves the professional judgment of the Performance Committee members and is dependent on such matters as the securities being traded, competition on other exchanges, personnel and systems changes, and other factors. Accordingly, such determinations are left to the expertise, discretion and judgment of the Performance Committee.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and further the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that the Exchange's procedures are designed to promote just and equitable

principles of trade and protect investors and the public interest by encouraging good performance and competition among specialists.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will impose no burden on competition; rather, it will enhance and encourage competition within the Exchange, and, more significantly, among the Exchange and other exchanges and markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing (although this, too, is important), but rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public. The Exchange also believes the Commission has expressly recognized that the types of procedures set forth in the proposed rule change for reviewing the performance of specialists and taking remedial action where appropriate, are necessary to ensure quality markets.<sup>9</sup>

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR-Amex-2002-48 and should be submitted by February 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47287; File No. SR-CBOE-2002-40]

### **Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Options on the CBOE Asian 25 Index and Options on the CBOE Euro 25 Index**

January 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On January 13, 2003, CBOE filed an amendment to the proposed rule change.<sup>3</sup> The Commission is publishing

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Securities Exchange Act Release No. 45260 (January 9, 2002), 67 FR 2255 (January 16, 2002) (order approving Amex-2001-19).

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE proposes to provide for the listing and trading of options on the CBOE Euro 25 Index and the CBOE Asian 25 Index, both broad-based indexes. Options on the CBOE Euro 25 Index and the CBOE Asian 25 Index would be cash-settled and would have European-style exercise provisions. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

#### **A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on the CBOE Euro 25 Index and the CBOE Asian 25 Index. Both the CBOE Euro 25 Index and the CBOE Asian 25 Index are capitalization-weighted indexes of twenty-five (25) American Depositary Receipts ("ADR"), New York Registered Shares ("NYS"), or NYSE Global Shares ("NGS"), which are traded on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("AMEX"), or the NASDAQ.

##### **Index Design**

The CBOE Euro 25 Index and the CBOE Asian 25 Index have each been

designed to measure the performance of large market capitalization companies in their respective regions. Both are market-capitalization weighted indices composed of twenty-five ADRs, NYSSs or NGSSs, which are traded on the NYSE, NASDAQ or the AMEX.<sup>4</sup> Options on both indexes shall be A.M. settled.

The component securities included in each index are based on market capitalization and the trading volume on the NYSE, NASDAQ, or AMEX over the past six months. Specifically, each component security must have a minimum market capitalization of \$250 million and a trading volume of at least 500,000 shares in each of the previous six months to be included in the index. In the case of depository receipts, the market capitalization is determined based on the shares outstanding in the "home" market and the price in U.S. Dollars of the ADRs, NYSSs, and NGSSs.

Unless otherwise specified herein, both indexes shall satisfy the following general initial and maintenance criteria. (1) At least 75% of the index, in terms of market capitalization weighting, must meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. (2) Any non-U.S. component security (common stock or ADR) that is not subject to a comprehensive surveillance agreement shall not in the aggregate represent more than 20% weight of the index's aggregate market capitalization, unless those non-U.S. components satisfy the alternative criteria under Interpretation and Policy .03 to Rule 5.3, as further discussed below. (3) No single component security will represent more than 30% of the weight of the index. (4) Finally, the five highest weighted component security, in the aggregate, shall not account for more than 60% of the total weight of the index.

CBOE represents that it will review each index quarterly following the expiration of the respective index option contract to ensure that the above criteria are satisfied, and to make quarterly share changes as appropriate.

##### **CBOE Euro 25 Index**

According to CBOE, the pool of index components from which CBOE may choose consists of 161 ADRs, NYSSs, and NGSSs that are traded on the NYSE or NASDAQ, and issued on behalf of companies domiciled in one of eleven member nations of the European Union.<sup>5</sup> Exhibit B to the proposed rule

change<sup>6</sup> illustrates the capitalization and weighting of the 25 component securities that constitute the current CBOE Euro 25 index, as well as the listed shares outstanding and prices for each respective security as of December 20, 2002. On that date, the twenty-five components ranged in capitalization from \$5.37 billion to \$97.208 billion. The largest component accounted for 11.64% of the total weighting of the index, while the smallest accounted for 0.64%. The mean capitalization of the firms in the index was \$30.326 billion.

CBOE believes that the CBOE Euro 25 Index satisfies the index criteria provided above. (1) 23 of the 25 stocks in the CBOE Euro 25 Index meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. This represents 92.59% of the index by market capitalization weight and 92% by number. (2) 23 of the 24 ADR or NYS components that underlie the index are subject to comprehensive surveillance agreements.<sup>7</sup> (3) No single component represents greater than 30% of the aggregate weight of the CBOE Euro 25 Index. (4) Finally, the five highest weighted component securities in the aggregate do not account for more than 60% of the weight of the Index.<sup>8</sup> Exhibit C to the proposed rule change specifically illustrates the manner by which each respective index component satisfies, or fails to satisfy, the underlying component listing criteria.

##### **CBOE Asian 25 Index**

The pool of index components from which CBOE may choose consists of 107 ADRs, NYSSs, and NGSSs that are traded on the NYSE, NASDAQ, or AMEX and are issued on behalf of companies domiciled in one of eight Asian-Pacific countries.<sup>9</sup> Exhibit D to the proposed rule change illustrates the capitalization and weighting of the CBOE Asian 25 Index component securities, as well as listed shares outstanding and prices on

in France, Finland, Ireland, Italy, Germany, the Netherlands, Spain, Belgium, Portugal, Greece, and Austria.

<sup>6</sup> Exhibits to the proposed rule change discussed herein are available at the Office of the Secretary, CBOE, and at the Commission.

<sup>7</sup> 24 of the 25 Euro 25 Index components are either ADRs or NYSSs and all are subject to comprehensive surveillance agreements or memoranda of understanding. One of the components, DaimlerChrysler, is a common stock. There is only one ADR in the Euro 25 Index, Nokia OYJ, in which the CBOE does not have in place a comprehensive surveillance agreement.

<sup>8</sup> The top five components of the CBOE Euro 25 Index represent 39.68% of the Index in terms of market capitalization.

<sup>9</sup> The components that make up the CBOE Asian 25 Index include securities of companies domiciled in Australia, China, India, Indonesia, Philippines, Singapore, South Korea and Taiwan.

of Market Regulation, Commission, dated January 10, 2003 ("Amendment No. 1") (replacing the original filing in its entirety). Amendment No. 1, among other things: (1) Clarifies the initial and maintenance criteria for the underlying component securities of the indices, including further detail on the component securities that are ADRs and not subject to comprehensive surveillance agreements; (2) clarifies that options on both indices will be A.M. settled; (3) provides more recent market capitalization and weighting figures; and (4) specifies that CBOE's surveillance procedures are adequate to monitor the trading of these products.

<sup>4</sup> The Exchange will make an updated list of the components underlying each index available to the public on the internet by accessing the following URL: <http://www.cboe.com/optprod/index/indexoptions.asp>.

<sup>5</sup> The components that make up the CBOE Euro 25 Index include securities of companies domiciled

December 20, 2002. On that date, the 25 components ranged in capitalization from \$382.722 million to \$49.140 billion. The largest component accounted for 18.38% of the total weighting of the index, while the smallest accounted for 0.14%. The mean capitalization of the firms in the index was \$10.696 billion.

CBOE believes that the CBOE Asian 25 Index satisfies the index criteria noted above. (1) 18 of the 25 stocks in the CBOE Asia Index meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. This represents 77.73% of the index by market capitalization weight and 72% by number. (2) 13 of the 25 stocks, representing 68.71% of the index by market capitalization weight, in the CBOE Asia Index are either subject to comprehensive surveillance agreements or are common stocks that are not required to have comprehensive surveillance agreements. Although this seemingly would mean that greater than 20% of the aggregate index capitalization is comprised of components without comprehensive surveillance agreements, CBOE notes that the Commission has specified in the past that a non-U.S. security need not be considered in calculating the 20% threshold if at least 50% of the worldwide trading volume in that particular security occurs within the U.S. market.<sup>10</sup> CBOE notes that this is consistent with Interpretation and Policy .03(ii) to CBOE Rule 5.3. Thus, CBOE plans to apply Interpretation and Policy .03 to CBOE Rule 5.3 to any non-U.S. component that exceeds the 20% threshold for non-U.S. components that are not subject to comprehensive surveillance sharing agreements.

Thus, as provided in Interpretation and Policy .03(iii) to CBOE Rule 5.3, an individual ADR without a comprehensive surveillance agreement is deemed to satisfy CBOE's listing criteria if: (a) At least 20% of the worldwide trading volume in that foreign security occurs within the U.S. market and a market for which CBOE has a comprehensive surveillance agreement; (b) the average daily trading volume of the ADR over the past 3 months is 100,000 shares or more; and,

(c) the trading volume is at least 60,000 shares per day in U.S. markets on a majority of trading days during the past months. As of December 20, 2002, CBOE represent that the applicable component securities meet these criteria. In light of these standards, 21 of the 25 stocks, or 89.39% of the aggregate index market capitalization do satisfy acceptable listing standards. (3) No single component represents greater than 30% of the aggregate weight of the CBOE Asian 25 Index. (4) Finally, the five highest weighted component securities, in the aggregate, do not account for more than 60% of the total weight of the Index.<sup>11</sup> Exhibit E to the proposed rule change illustrates the manner by which each respective index component satisfies, or fails to satisfy, the underlying component criteria.

#### Calculation

The methodology used to calculate the value of the indices is similar to the methodology used to calculate the value of other well-known broad-based indices. The level of each index reflects the total market value of the component stocks relative to a particular base period. The indices base date is January 2, 2002, when the respective index values were set to 100. On April 16, 2002, the CBOE Euro 25 Index had a closing value of 95.99 and the CBOE Asian 25 Index had a closing value of 95.64. The daily calculation of each index is computed by dividing the total market value of the companies in the respective Index by the index divisor. The divisor is adjusted periodically to maintain consistent measurement of the index. The values of each Index will be calculated by CBOE and disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via Options Price Reporting Authority.

#### Index Option Trading

In addition to regular Index options, CBOE proposes to provide for the listing of long-term index option series ("LEAPS®") in accordance with CBOE Rule 24.9.

For options on each index, strike prices will be set to bracket the respective index in 2 ½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below \$3 will be 0.05 and for series trading above \$3 the minimum tick will be 0.10. The trading hours for options on both indexes will be from 8:30 a.m.

to 3:02 p.m. Chicago time. Exhibits F and G to proposed rule change present proposed contract specifications for CBOE Euro 25 Index options and CBOE Asian 25 Index options.

#### Maintenance

Both the CBOE Euro 25 Index and the CBOE Asian 25 Index will be monitored and maintained by CBOE. The CBOE will make all necessary adjustments to the indexes to reflect component additions and deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, require simple changes to the common shares outstanding and the stock prices of the underlying components. Other corporate actions, such as share issuances, change the market value of the Index and require the use of an index divisor to effect adjustments. Over time the number of component securities in the Index may change, but at no time will the number of underlying components drop to less than twenty. In the event of a stock replacement, the divisor will be adjusted accordingly to provide continuity in index values.<sup>12</sup>

Absent prior Commission approval, the component securities in either index will not exceed 40 nor be lower than 20 and shall satisfy the criteria as provided above. If the Index fails at any time to satisfy the maintenance criteria, CBOE will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on each respective Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

#### Surveillance

CBOE will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options and LEAPS. For surveillance purposes, CBOE will make all reasonable efforts to monitor the trading activity and other pertinent information relating to the underlying components. CBOE represents that its surveillance procedures are adequate to monitor the trading of these products.

<sup>10</sup> For further details, see CBOE Mexico Index filing, Securities Exchange Act Release No. 34241 (June 22, 1994), 59 FR 33557 (June 29, 1994) (SR-CBOE-94-18), citing Securities Exchange Act Release No. 33554, 59 FR 5622 (January 31, 1994) (stating by reference to the proposal that it is appropriate to permit the listing of options on an ADR without the existence of a comprehensive surveillance agreement with the foreign market where the underlying trades, as long as the U.S. market for the underlying ADR is at least 50% or more of the worldwide trading volume).

<sup>11</sup> The top five components of the CBOE Asian 25 Index represent 55.20% of the weight of the index in terms of market capitalization.

<sup>12</sup> As noted in the section regarding "Index Design," each index will be re-balanced quarterly following the expiration of the index option contract.

## Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:02 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated by CBOE based on the opening prices of the component securities on the business day prior to expiration. If a component security fails to open for trading, the last available price on the security will be used in the calculation of the index, as is done for currently listed indices. When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of index options at expiration will be determined at the opening of regular Thursday trading.

## Position Limits

CBOE proposes to establish position limits for options on the CBOE Euro 25 Index and the CBOE Asian 25 Index at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are roughly equivalent to the limits applicable to options on other broad-based indices under CBOE Rule 24.4(a).<sup>13</sup>

## Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will be applicable to both CBOE Euro 25 Index options and CBOE Asian 25 Index options. Index option contracts based on both the CBOE Euro 25 Index and the CBOE Asian 25 Index will be subject to the position limit requirements of CBOE Rule 24.4(a).

Additionally, CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of both CBOE Euro 25 Index options and CBOE Asian 25 Index options. CBOE has also been informed that OPRA has the capacity to support such new series (see Exhibit H to the proposed rule change).

<sup>13</sup> Specifically, CBOE Rule 24.4(a) imposes a standard position limit of 50,000 contracts on the same side of the market for CBOE's Mexico 30 Index and CBOE's Germany 25 Index.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>14</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in particular in that it will permit trading in options based on the Internet Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(A) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR-CBOE-2002-40 and should be submitted by February 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47290; File No. SR-CBOE-2003-02]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Reporting of Other Affiliations of Associated Persons to the Exchange**

January 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 9, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 3.6A—"Qualification and Registration of Certain Associated Persons," and Rule 9.4—"Other Affiliations of Registered Representatives," to (i) eliminate the need for member organizations to seek prior Exchange approval for Registered Representatives, employed in a non-supervisory capacity, to engage in business practices during business

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).